

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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ALTERRA AMERICA INSURANCE CO.,

INDEX NO. 652813/2012

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE, NFL  
PROPERTIES, LLC, TIG INSURANCE COMPANY,  
CENTURY INDEMNITY COMPANY, CHARTIS  
PROPERTY CASUALTY COMPANY, DISCOVER  
PROPERTY & CASUALTY INSURANCE COMPANY,  
FEDERAL INSURANCE COMPANY, GREAT  
NORTHERN INSURANCE COMPANY, GUARANTEE  
INSURANCE COMPANY, HARTFORD ACCIDENT  
& INDEMNITY COMPANY, NORTH RIVER  
INSURANCE COMPANY, ONEBEACON AMERICA  
INSURANCE COMPANY, UNITED STATES FIRE  
INSURANCE COMPANY, ACE AMERICAN  
INSURANCE COMPANY, ILLINOIS UNION  
INSURANCE COMPANY, ALLSTATE INSURANCE  
COMPANY, ARROWOOD INDEMNITY COMPANY,  
CHARTIS SPECIALTY INSURANCE COMPANY,  
CONTINENTAL CASUALTY COMPANY,  
CONTINENTAL INSURANCE COMPANY,  
ILLINOIS NATIONAL INSURANCE COMPANY,  
INDEMNITY INSURANCE COMPANY OF  
NORTH AMERICA, NATIONAL UNION FIRE  
INSURANCE COMPANY OF PITTSBURGH, PA,  
MUNICH REINSURANCE AMERICA, INC.,  
NEW ENGLAND REINSURANCE CORPORATION,  
ST. PAUL PROTECTIVE INSURANCE COMPANY,  
TRAVELERS CASUALTY & SURETY COMPANY,  
TRAVELERS INDEMNITY COMPANY,  
TRAVELERS PROPERTY CASUALTY COMPANY  
OF AMERICA, VIGILANT INSURANCE COMPANY,  
WESTCHESTER FIRE INSURANCE COMPANY,  
XL INSURANCE AMERICA, INC., and  
COMPANIES ABC-XYZ, inclusive,

Defendants.

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AMENDED ANSWER TO AMENDED COMPLAINT, COUNTERCLAIMS, AND CROSS-  
CLAIMS OF BEDIVERE INSURANCE COMPANY

Defendant Bedivere Insurance Company ("Bedivere"),  
formerly known as OneBeacon Insurance Company, improperly pled  
as OneBeacon America Insurance Company, by way of Amended Answer

to the Amended Complaint of Plaintiff Alterra America Insurance Co., states as follows:

#### NATURE OF ACTION

1. The allegations of Paragraph One of the Amended Complaint set forth legal conclusions to which no response is required. To the extent a response is deemed to be required, Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph One of the Amended Complaint.

2. The allegations of Paragraph Two of the Amended Complaint set forth legal conclusions to which no response is required. To the extent a response is deemed to be required, Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Two of the Amended Complaint.

3. The allegations of Paragraph Three of the Amended Complaint set forth legal conclusions to which no response is required. To the extent a response is deemed to be required, Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Three of the Amended Complaint.

4. The allegations of Paragraph Four of the Amended Complaint set forth legal conclusions to which no response is

required. To the extent a response is deemed to be required, Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Four of the Amended Complaint.

5. The allegations of Paragraph Five of the Amended Complaint set forth legal conclusions to which no response is required. To the extent a response is deemed to be required, Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Five of the Amended Complaint.

#### **VENUE**

6. Bedivere admits the allegations of Paragraph Six of the Amended Complaint.

#### **PARTIES**

7. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Seven of the Amended Complaint.

8. Except to admit that, upon information and belief, the NFL is an unincorporated association with its headquarters and principal place of business located at 345 Park Avenue, New York, New York, Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the remaining allegations in Paragraph Eight of the Amended

Complaint.

9. Upon information and belief, Bedivere admits the allegations of Paragraph Nine of the Amended Complaint.

10. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Ten of the Amended Complaint.

11. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Eleven of the Amended Complaint.

12. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Twelve of the Amended Complaint.

13. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Thirteen of the Amended Complaint.

14. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Fourteen of the Amended Complaint.

15. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Fifteen of the Amended Complaint.

16. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations

in Paragraph Sixteen of the Amended Complaint.

17. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Seventeen of the Amended Complaint.

18. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Eighteen of the Amended Complaint.

19. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Nineteen of the Amended Complaint.

20. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Twenty of the Amended Complaint.

21. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Twenty-One of the Amended Complaint.

22. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Twenty-Two of the Amended Complaint.

23. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Twenty-Three of the Amended Complaint.

24. Except to admit that Bedivere Insurance Company was

and is authorized to do business in New York, Bedivere denies the allegations in Paragraph Twenty-Four of the Amended Complaint, and further states that Bedivere Insurance Company is organized under the laws of the state of Pennsylvania with its principal place of business in Philadelphia, Pennsylvania.

25. Bedivere denies the allegations of Paragraph Twenty-Five of the Amended Complaint, and further states that Bedivere Insurance Company is the successor in interest to General Accident Fire and Life Assurance Corporation Ltd. ("General Accident").

26. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Twenty-Six of the Amended Complaint.

27. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Twenty-Seven of the Amended Complaint.

28. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Twenty-Eight of the Amended Complaint.

29. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Twenty-Nine of the Amended Complaint.

30. Bedivere lacks sufficient knowledge or information

upon which to form a belief as to the truth of the allegations in Paragraph Thirty of the Amended Complaint.

31. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Thirty-One of the Amended Complaint.

32. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Thirty-Two of the Amended Complaint.

33. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Thirty-Three of the Amended Complaint.

34. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Thirty-Four of the Amended Complaint.

35. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Thirty-Five of the Amended Complaint.

36. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Thirty-Six of the Amended Complaint.

37. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Thirty-Seven of the Amended Complaint.

38. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Thirty-Eight of the Amended Complaint.

39. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Thirty-Nine of the Amended Complaint.

40. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Forty of the Amended Complaint.

41. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Forty-One of the Amended Complaint.

42. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Forty-Two of the Amended Complaint.

43. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Forty-Three of the Amended Complaint.

44. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Forty-Four of the Amended Complaint.

45. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations



in Paragraph Forty-Five of the Amended Complaint.

46. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Forty-Six of the Amended Complaint.

47. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Forty-Seven of the Amended Complaint.

48. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Forty-Eight of the Amended Complaint.

49. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Forty-Nine of the Amended Complaint.

50. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Fifty of the Amended Complaint.

51. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Fifty-One of the Amended Complaint.

52. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Fifty-Two of the Amended Complaint.

53. Bedivere lacks sufficient knowledge or information

upon which to form a belief as to the truth of the allegations in Paragraph Fifty-Three of the Amended Complaint.

54. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Fifty-Four of the Amended Complaint.

55. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Fifty-Five of the Amended Complaint.

56. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Fifty-Six of the Amended Complaint.

#### FACTUAL BACKGROUND

##### I. THE CONCUSSION ACTIONS

57. Except to admit that, upon information and belief, certain former professional football players and their spouses have filed lawsuits against the National Football League ("NFL") and/or NFL Properties, LLC ("NFL Properties") and to state that the pleadings in such actions speak for themselves, Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the remaining allegations in Paragraph Fifty-Seven of the Amended Complaint.

58. Except to admit that, upon information and belief, certain former professional football players and their spouses

have filed lawsuits against the NFL and/or NFL Properties and to state that the pleadings in such actions speak for themselves, Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the remaining allegations in Paragraph Fifty-Eight of the Amended Complaint.

59. Except to admit that, upon information and belief, certain lawsuits against the NFL and/or NFL Properties have been transferred to the United States District Court for the Eastern District of Pennsylvania and to state that any orders entered by such court speak for themselves, Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the remaining allegations in Paragraph Fifty-Nine of the Amended Complaint.

60. Except to admit that, upon information and belief, an Amended Master Complaint was filed in the United States District Court for the Eastern District of Pennsylvania and to state that this pleading speaks for itself, Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the remaining allegations in Paragraph Sixty of the Amended Complaint.

61. Except to admit that, upon information and belief, an Amended Master Complaint was filed in the United States District Court for the Eastern District of Pennsylvania and to

state that this pleading speaks for itself, Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the remaining allegations in Paragraph Sixty-One of the Amended Complaint.

## **II. ALTERRA'S POLICY AND TENDERS**

62. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Sixty-Two of the Amended Complaint.

63. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Sixty-Three of the Amended Complaint.

64. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Sixty-Four of the Amended Complaint.

65. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Sixty-Five of the Amended Complaint.

66. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Sixty-Six of the Amended Complaint.

67. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Sixty-Seven of the Amended Complaint.

68. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Sixty-Eight of the Amended Complaint.

69. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Sixty-Nine of the Amended Complaint.

### III. INSURER DEFENDANTS' POLICIES

70. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Seventy of the Amended Complaint.

### IV. THE NFL AND NFL PROPERTIES' CALIFORNIA ACTION, AND THEIR IMPROPER CONDUCT

71. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Seventy-One of the Amended Complaint.

72. Bedivere admits that, upon information and belief, Exhibit C of the Amended Complaint is a true and accurate copy of a complaint filed by the NFL and NFL Properties in the Superior Court of the State of California, County of Los Angeles.

73. Upon information and belief, Bedivere admits the allegations of Paragraph Seventy-Three of the Amended Complaint.

74. Bedivere lacks sufficient knowledge or information

upon which to form a belief as to the truth of the allegations in Paragraph Seventy-Four of the Amended Complaint and refers to the complaint filed by the NFL and NFL Properties in the California action, which speaks for itself.

75. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Seventy-Five of the Amended Complaint.

76. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Seventy-Six of the Amended Complaint.

77. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Seventy-Seven of the Amended Complaint.

78. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Seventy-Eight of the Amended Complaint.

79. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Seventy-Nine of the Amended Complaint.

80. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Eighty of the Amended Complaint.

81. Bedivere lacks sufficient knowledge or information

upon which to form a belief as to the truth of the allegations in Paragraph Eighty-One of the Amended Complaint.

82. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Eighty-Two of the Amended Complaint.

#### COUNT I

##### **(Declaratory Relief as to Duty to Defend - Against the NFL and NFL Properties)**

83. Bedivere repeats and incorporates herein each and every response to the allegations contained in Paragraphs One through Eighty-Two as if set forth at length.

84. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Eighty-Four of the Amended Complaint.

85. Except to deny any allegations of Paragraph Eighty-Five of the Amended Complaint that are intended or construed to seek relief from Bedivere, Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the remaining allegations in Paragraph Eighty-Five of the Amended Complaint.

#### COUNT II

##### **(Declaratory Relief as to Duty to Indemnify - Against the NFL and NFL Properties)**

86. Bedivere repeats and incorporates herein each and

every response to the allegations contained in Paragraphs One through Eighty-Five as if set forth at length.

87. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Eighty-Seven of the Amended Complaint.

88. Except to deny any allegations of Paragraph Eighty-Eight of the Amended Complaint that are intended or construed to seek relief from Bedivere, Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the remaining allegations in Paragraph Eighty-Eight of the Amended Complaint.

### COUNT III

#### **(Breach of Contract - Duty to Cooperate - Against the NFL and NFL Properties)**

89. Bedivere repeats and incorporates herein each and every response to the allegations contained in Paragraphs One through Eighty-Eight as if set forth at lengths.

90. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Ninety of the Amended Complaint.

91. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Ninety-One of the Amended Complaint.



92. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Ninety-Two of the Amended Complaint.

93. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in Paragraph Ninety-Three of the Amended Complaint.

#### COUNT IV

#### **(Declaratory Judgment - Against Insurer Defendants and Companies ABC-XYZ)**

94. Bedivere repeats and incorporates each and every response to the allegations contained in Paragraphs One through Ninety-Three as if set forth at length.

95. Except to admit that General Accident issued a liability insurance policy to National Football League Properties Inc., the terms and conditions of which speak for themselves, Bedivere denies the remaining allegations contained in Paragraph Ninety-Five of the Amended Complaint as they pertain to Bedivere. Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the remainder of the allegations pertaining to other Insurer Defendants in Paragraph Ninety-Five of the Amended Complaint.

96. The allegations of Paragraph Ninety-Six of the Amended Complaint set forth legal conclusions to which no

response is required. To the extent a response is deemed to be required, Bedivere denies any allegations of Paragraph Ninety-Six of the Amended Complaint that plaintiff is entitled to any relief from Bedivere, and Bedivere lacks sufficient knowledge or information upon which to form a belief as to the truth of the remainder of the allegations pertaining to other Insurer Defendants in Paragraph Ninety-Six of the Amended Complaint.

#### AFFIRMATIVE DEFENSES

##### AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The Amended Complaint and its alleged causes of action fail to state a claim upon which relief may be granted as to Bedivere.

##### AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The Amended Complaint fails to set forth facts sufficient to give rise to a claim against Bedivere.

##### AS AND FOR A THIRD AFFIRMATIVE DEFENSE

The General Accident policy affords coverage only to the named insured or additional insureds as defined in the policy and, accordingly, such policy provides no coverage to any person or entity that is not included as a named or additional insured.

##### AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

Coverage under the General Accident policy is barred or limited by plaintiff, NFL Properties, and any other alleged

insured's failure to provide timely or adequate notice of occurrences or suits, as required by the policy.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

Coverage under the General Accident policy is barred to the extent that any insured under such policy voluntarily made any payment, assumed any obligation, or incurred any expense without the consent of Bedivere.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

No coverage is available from Bedivere to the extent that the claims for which Plaintiff and/or the insured(s) seek coverage do not constitute "bodily injury", "property damage" or "personal injury" within the meaning of and definitions contained in the General Accident policy, nor for claims seeking medical monitoring of uninjured claimants based on the conduct of any insured.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

No coverage is available from Bedivere for any claim in connection with payments or obligations that any insured under the General Accident policy was not legally obligated to pay as damages.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

No coverage is available from Bedivere to the extent that the claims arise out of losses, claims, damage, and/or harm

known or already in existence or in progress prior to the effective date of the General Accident policy, or that were otherwise reasonably foreseeable before the General Accident policy took effect.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

Coverage is not afforded by the General Accident policy for events, injuries and damages that did not occur during the effective period of coverage of the policy.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

The General Accident policy applies only after any self-insured retentions, deductibles and any other available insurance policies have been properly exhausted and paid.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

No coverage is available from Bedivere to the extent that the events giving rise to the claims for which insurance coverage is sought do not constitute an "accident" or "occurrence" within the meaning of and definitions contained in the General Accident policy.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

The General Accident policy does not apply to accidents, events or occurrences that result in bodily injury, property damage or personal injury that was either expected or intended by any insured under the policy.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

Any coverage afforded by the General Accident policy is restricted, limited or precluded by the "other insurance" clause contained in the policy.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

Any claims against Bedivere are barred, in whole or in part, by the terms, exclusions, conditions, limitations and other provisions contained in the General Accident policy.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

The General Accident policy contains conditions precedent and conditions subsequent that are prerequisites to coverage and these conditions have not been satisfied.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

The General Accident policy applies only to fortuitous events, and there is no coverage for the underlying claims to the extent that they arise from acts or incidents that were not fortuitous.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

To the extent that the General Accident policy has any obligation with respect to payment of defense costs for one or more of the underlying claims, the General Accident policy has no obligation for any such costs that are not reasonable and

necessary to the defense of NFL Properties.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

Any coverage afforded by the General Accident policy is limited by the policy's per occurrence and aggregate limits of liability, and by language in the policy providing that all exposure to substantially the same general conditions shall constitute a single occurrence.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

Coverage under the General Accident policy is barred to the extent that any insured under such policy failed to cooperate with Bedivere as required by the General Accident policy.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

Coverage under the General Accident policy is barred in whole or in part to the extent that plaintiff, NFL Properties, and/or any other insured under the General Accident policy failed to mitigate, minimize or avoid any damages allegedly sustained.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

Coverage under the General Accident policy is barred, in whole or in part, to the extent that plaintiff, NFL Properties, and/or any other insured under the General Accident policy has impaired Bedivere's rights of subrogation or contribution from any party responsible for any allegedly covered loss.

AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

Bedivere is entitled to a set-off or credit for any amounts paid by plaintiff, another defendant, and/or third party.

AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE

Any claims for coverage from Bedivere may be barred, in whole or in part, by the doctrine of unclean hands.

AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE

To the extent that the named insured(s), its agents or representatives failed to disclose, concealed, or misrepresented facts that were material to the risks being underwritten by Bedivere, coverage under the General Accident policy is barred, and such policy is void ab initio or, alternatively, such policy should be reformed to eliminate coverage for such risks.

AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE

Any claims for coverage under the General Accident policy may be barred by the doctrine of laches.

AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE

Any claims for coverage under the General Accident policy may be barred by the doctrines of waiver and/or estoppel.

AS AND FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Any claims for coverage under the General Accident policy is barred, in whole or in part, to the extent any insured under such policy engaged in any intentional or illegal conduct.

AS AND FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE

In the event this Court adopts or implements an interpretation of law that allocates indemnity and/or defense payments over a period of time, then:

a. The Court must consider and include all periods relevant to the action, from and including the earliest period of injury or damage, in its final adjudication of the rights and obligations of the parties herein, including without limitation the rights and obligations of the parties pursuant to insurance policies, self-insured retentions and deductible amounts attributable to such periods;

b. The insured is obligated to make all indemnity and/or defense payments attributable to uninsured periods and other periods for which policies do not exist, and for which self-insured periods or retentions and deductible amounts apply;

c. The insured is responsible for indemnity and/or defense payments attributable to insolvent insurers, insurers with which the insured has settled, and insurers that are not parties to this action; and

d. Bedivere is not obligated to pay any portion of damages and defense expense not properly allocated to its policy period and/or damage or injury that did not take place during its policy period, and these proportionate shares are properly



the responsibility of the insured or its other insurers.

AS AND FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE

Coverage under the General Accident policy is barred to the extent that coverage is sought for punitive, multiple, and/or exemplary damages, fines, or penalties.

AS AND FOR A THIRTIETH AFFIRMATIVE DEFENSE

Coverage under the General Accident policy is barred to the extent that the claims seek costs incurred as a result of equitable or injunctive relief or arising out of administrative or non-judicial proceedings.

AS AND FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE

To the extent the General Accident policy excludes coverage for liability assumed by any insured under any contract or agreement, coverage for any claims that arise from such liability is barred.

AS AND FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE

Bedivere reserves the right to amend or assert additional defenses and/or to otherwise supplement or alter this answer upon completion of appropriate investigation and discovery.

AS AND FOR A COUNTERCLAIM AGAINST PLAINTIFF AND AS AND FOR A  
CROSS CLAIM AGAINST EACH OF THE OTHER DEFENDANTS

Defendant Bedivere Insurance Company, by way of Counterclaim against Plaintiff and by way of Crossclaim against

each of the other Defendants, states as follows:

1. Bedivere has agreed to participate in the defense of NFL Properties with respect to certain Underlying Lawsuits under General Accident policy number SMP 257629 to National Football League Properties Inc., subject to a complete reservation of rights, including but not limited to the right to withdraw from participation in the defense of claims, the right to decline to indemnify NFL Properties, and/or the right to obtain reimbursement of amounts paid by Bedivere toward the defense and/or indemnification of Underlying Lawsuits not covered under the policy or in excess of the amount properly allocated to the General Accident policy.

2. Notwithstanding same, an actual and justiciable controversy exists between and among Bedivere, NFL, NFL Properties, plaintiff, and the other defendants regarding the existence, nature, and scope of coverage of Bedivere, if any, for the Underlying Lawsuits and the right of Bedivere to reimbursement from NFL, NFL Properties, plaintiff, and/or the other defendants for any amounts that may be paid by Bedivere.

3. Bedivere is entitled to declarations from this Court regarding any alleged past or future duty of Bedivere to defend and/or indemnify NFL and/or NFL Properties in connection with the Underlying Lawsuits, any alleged obligation of Bedivere to

reimburse any amounts incurred in the defense or indemnification of NFL Properties in connection with the Underlying Lawsuits, and the reimbursement of any amounts that may be paid by Bedivere in connection with the defense and/or resolution of any Underlying Lawsuit, including but not limited to the following:

- A. The General Accident policy does not provide coverage to any person or entity not identified as an insured in the General Accident policy, including but not limited to the NFL.
- B. The General Accident policy has no obligation with respect to reimbursement of any defense expenses not reasonably and necessarily incurred by or on behalf of NFL Properties.
- C. The General Accident policy does not provide coverage for any claim to the extent timely and/or adequate notice as required by the General Accident policy was not furnished.
- D. The General Accident policy does not provide coverage for any claim to the extent that it arises from acts or incidents that were not fortuitous.
- E. The General Accident policy does not provide coverage for losses, claims, damage, and/or harm

known or already in existence or in progress prior to the effective date of the General Accident policy, or that were otherwise reasonably foreseeable before the General Accident policy took effect.

- F. The General Accident policy does not provide coverage for any bodily injury that was either expected or intended by any insured under the policy.
- G. The General Accident policy does not provide coverage to the extent any insured under such policy engaged in any intentional or illegal conduct.
- H. The General Accident policy does not provide coverage for claims arising from events that do not constitute an "accident" or "occurrence" within the meaning of and definitions contained in the General Accident policy.
- I. The General Accident policy does not provide coverage for damages that do not constitute "bodily injury" within the meaning of and definitions contained in the General Accident policy.

- J. The General Accident policy does not provide coverage for any claim in connection with payments or obligations that any insured under the General Accident policy was not legally obligated to pay as damages.
- K. The General Accident policy does not provide coverage to the extent that the events and/or alleged damage or injury did not occur within the effective coverage period of the General Accident policy.
- L. The General Accident policy applies only after any self-insured retentions, deductibles, and any other available insurance policies have been properly exhausted and paid.
- M. Any coverage afforded by the General Accident policy is restricted, limited or precluded by the "other insurance" clause contained in the policy.
- N. Any coverage afforded by the General Accident policy is limited by the policy's per occurrence and aggregate limits of liability.
- O. Bedivere has no obligation to the extent any damages allegedly sustained were not mitigated, minimized, or avoided.

- P. Bedivere has no obligation to the extent any party has impaired Bedivere's rights of subrogation or contribution from any party responsible for any allegedly covered loss.
- Q. The General Accident policy does not provide coverage for any punitive, multiple, and/or exemplary damages, fines, or penalties.
- R. The General Accident policy does not provide coverage for any claims seeking costs incurred as a result of equitable or injunctive relief or arising out of administrative or non-judicial proceedings.
- S. The General Accident policy does not provide coverage for liability assumed by any insured under any contract or agreement.
- T. The General Accident policy does not provide coverage to the extent any insured voluntarily made any payment, assumed any obligation, or incurred any expense without the consent of Bedivere.
- U. The General Accident policy does not provide coverage to the extent of any failure to cooperate as required by the policy.

V. The General Accident policy does not provide coverage to the extent of any other failure by any insured to perform all obligations required by the policy and/or to satisfy all conditions precedent and conditions subsequent that are prerequisites to coverage.

WHEREFORE, Defendant Bedivere Insurance Company respectfully requests that the Court enter a judgment:

(1) For declarations concerning the existence, terms, and conditions of the General Accident policy;

(2) For declarations concerning the parties' respective rights and obligations with respect to the Underlying Concussion Actions;

(3) For declarations concerning the appropriate apportionment and allocation of amounts paid or to be paid for defense and indemnity costs in connection with the Underlying Lawsuits;

(4) For declarations concerning Bedivere's entitlement to recoupment, in whole or in part, of any amounts paid to or on behalf of NFL Properties in connection with the Underlying Lawsuits;

(5) For declarations concerning Bedivere's entitlement to reimbursement from plaintiff, the NFL, and/or the other insurer

defendants, in whole or in part, for amounts paid to or on behalf of NFL Properties in connection with the Underlying Lawsuits;

(6) Dismissing with prejudice all claims asserted against Bedivere in plaintiff's Complaint, and any and all cross-claims that have been or will be asserted against Bedivere, to the extent that such claims or cross-claims seek relief inconsistent with the relief to which Bedivere is entitled on its Counterclaim and Crossclaim, and/or to the extent that Bedivere is otherwise entitled to dismissal with prejudice of such claims;

(7) Awarding Bedivere its attorneys' fees, costs of suit and interest on any monetary payments by Bedivere to which Bedivere is adjudged to be entitled to recover; and




(8) Awarding Bedivere such other and further relief that this Court deems just, proper, and equitable.

Dated: New York, New York  
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